

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE

DODD POWELL KING, and	*
CHERYL A. KING,	*
	No. 2:09-CV-00276
	JURY DEMAND
Plaintiffs/Counter-Defendants,	*
vs.	*
ALLSTATE INSURANCE COMPANY,	*
Defendant/Counter-Plaintiff.	*

MOTION FOR SUMMARY JUDGMENT ON PENDING COUNTER-COMPLAINT

COMES the Counter-Plaintiff, Allstate Insurance Company (“Allstate”), by and through counsel, pursuant to Rule 56 of the *Federal Rules of Civil Procedure*, and moves this Court to enter summary judgment in Allstate’s favor on its pending counter complaint. A Memorandum of Law in Support of this Motion for Summary Judgment and other supporting documents are attached.

GROUND UPON WHICH SUMMARY JUDGMENT SHOULD BE GRANTED

Allstate issued a policy of insurance to Plaintiffs Dodd King and Cheryl King for a structure located at 289 Old Thomas Bridge Road, Bluff City, Tennessee; such policy included certain terms, limitations, conditions and exclusions. Sometime thereafter, Plaintiffs submitted a claim to Allstate for an alleged fire loss occurring at their residence. After due consideration, Allstate denied Plaintiffs’ claim. Plaintiffs then unjustifiably sued Allstate and alleged bad faith under Tenn. Code Ann. § 56-7-105. Allstate averred that the fire loss was caused by or at the

direction of Plaintiffs with the intent to defraud Allstate, and following the fire and in the presentation of the claim(s) and in dealing with Allstate, in submitting documents, giving statements, presenting for Examinations Under Oath and in many dealings with Allstate, Plaintiffs made multiple misrepresentations and intentionally concealed and misrepresented material facts and circumstances concerning the insurance and the losses. Because Plaintiffs presented a claim not in good faith, Allstate incurred expenses, losses and injury to investigate the claim(s); therefore, Allstate counter-complained for damages under Tenn. Code Ann. § 56-7-106 in an amount not to exceed twenty-five percent of the loss claimed under the policy.

Allstate filed a Rule 37 Motion for Sanctions [Doc. 23] and, based upon the Plaintiffs' failure to respond or otherwise act, this Court ordered the dismissal of Plaintiffs' claims against Allstate. [Docs. 31-33.] Neither the Court's Report and Recommendation [Doc. 31] nor Order [Doc. 32] mentions or dismisses Allstate's pending counter-complaint. Summary Judgment should be granted in Allstate's favor because Plaintiffs did not bring their suit in good faith and Tenn. Code Ann. § 56-7-106 provides a recovery to an insurance company under this set of facts. The pleadings and discovery completed at this time fully support these reasons and firmly establish that there are no genuine issues of material facts and that Summary Judgment should be granted for Allstate.

In support of the Motion for Summary Judgment, Allstate submits the following:

1. Statement of Undisputed Material Facts;
2. Memorandum of Law;
3. Complaint (Exhibit A);
4. Policy of Insurance (Exhibit B);
5. Sworn Proof of Loss (Exhibit C); and

6. Affidavit of Gary Bobo (Exhibit D).

WHEREFORE, Allstate respectfully requests that this Court enter an Order granting summary judgment in its favor on its pending counter-complaint in an amount not to exceed \$47,687.50, representing twenty-five percent of the loss claimed.

Respectfully submitted,

ALLSTATE INSURANCE COMPANY

By: s/ Suzanne S. Cook.
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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2014, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U. S. Mail. Parties may access this filing through the Court's electronic filing system.

Dodd P. King
368 Wassum lane
Bluff City, TN 37618

Ms. Cheryl King
901 Pennsylvania Avenue
Bristol, TN 37618

s/ Suzanne S. Cook.